HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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(1) S.B. Civil First Appeal No. 23 / 1993

(Arising out of Civil Original Suit No.104/1987)

Swaroop Singh son of Doongar Singhji Devra, resident of Mev, District: Sirohi. ----Appellant

Versus

Subhash Singh son of Shri Khuman Singhji Ranawat, resident of Kankarva, Tehsil Kapasan, District Chittorgarh. ----Respondent

(2) S.B. Civil First Appeal No.154 / 1992

(Arising out of Civil Original Suit No.47/1986)

Appellants :

Legal Representatives of Nathu Lal son of Modilal Mali:

1/1. Legal Representatives of Ganesh Lal son of Nathulal Mali:

1/1/1. Smt. Geeta Mali widow of Ganesh Mali

1/1/2. Chetan Mali son of Ganesh Mali

Both residents of New Mali Colony,

Jhada Aamla Tekri Road, Udaipur

1/1/3. Sunita Mali wife of Puneet Bamnoshia

1/1/4. Jaya Mali wife of Suresh Mali

1/1/5. Sashi Mali wife of Wardichand Mali

All daughters of Ganesh Mali

All residents of 16, New Ashok Vihar, Chandanwadi

Road, Gali No. 4, Udaipur

1/2. Smt. Shanta Devi wife of Shri Narainlal (d/O Nathulal Mali)

Resident of Bhopalpura, Udaipur

Through power of attorney holder

Narainlal son of Hari Ram Mali

resident of Sardarpura, Udaipur.

----(defendant)

Versus

Respondent :

Subhash Singh son of Shri Khuman Singhji Ranawat, Resident of Kankarva, Tehsil Kapasan, District Chittorgarh.

----(plaintiff)

Connected With

(3) S.B. Civil First Appeal No. 141 / 1992

(Arising out of Civil Original Suit No.48/1986)

Swaroop Singh son of Shri Doongar Singhji Devra, resident of Mev, District Sirohi. ----Appellant

Versus

Subhash Singh son of Shri Khuman Singhji Ranawat, Resident of Kankarva, Tehsil Kapasan, District Chittorgarh. ---Respondent

(4) S.B. Civil First Appeal No. 142 / 1992

(Arising out of Civil Original Suit No.50/1986)

Narayan Lal son of Shri Hari Ramji b/c Mali, resident of Sardarpura, Udaipur. ----Appellant

Versus

Subhash Singh son of Shri Khuman Singhji Ranawat, Resident of Kankarva, Tehsil Kapasan, District Chittorgarh. ----Respondent

(5) S.B. Civil First Appeal No. 22 / 1993

(Arising out of Civil Original Suit No.49/1986)

Swaroop Singh son of Shri Doongar Singhji Devra, resident of Mev, District Sirohi. ----Appellant

Versus

Subhash Singh son of Shri Kuman Singhji Ranawat, resident of Kankarva, Tehsil Kapasan, District Chittorgarh. ----Respondent

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For Appellant(s) : Ms Rekha Borana

For Respondent(s) : Mr. Arpit Bhoot

JUSTICE DINESH MEHTA

Judgment

02.04.2018

The present group of appeals arise out of five separate judgments dated 20.08.1992 passed by learned Addl. District Judge No.2, Udaipur (hereinafter referred to as 'the Trial Court') in five civil suits involving common question of facts and law, questioning the identical sale deeds executed by defendant No.2 – Smt. Anand Kumari.

All the five appeals are being decided conjointly vide this common order. However, the facts relating to Civil First Appeal No.23/1993 (Swaroop Singh Vs. Subhash Singh), emanating from the judgment and decree passed in Civil Original Suit No.104/1987 (Old No.103/1978) are being taken into consideration, as a lead case.

The facts apropos this appeal are that one Khuman Singh sold a part of open land 'Badi', vide registered sale deed dated 24.08.1996 to his wife – Smt. Anand Kumari. Said Khuman Singh died on 02.01.1972, whereafter his wife Smt. Anand Kumari adopted Subhash Singh, the plaintiff – respondent herein as per Hindu customs and rituals. Anand Kumari – owner of the land in question thereafter sold a part of the said land to defendant No.1 – Raj Kumari and executed a registered sale deed on 25.05.1976.

The plaintiff Subhash Singh – the adopted son, instituted a suit for declaration and possession, inter alia, contending that his natural father Narendra Singh Ranawat had given him in adoption to Sh. Khuman Singh Ranawat, on whose behalf, the defendant No.2 – Smt. Anand Kumari had observed the requisite ceremony as per the customs prevalent. The plaintiff stated that apart from observing customary formalities on 14.1.1972, the defendant No.2 – Smt. Anand Kumari executed an adoption deed, ratifying the adoption, which was on behalf of herself and her husband Shri Khuman Singh Ranawat. It has also been asserted in the plaint that at the time of adoption, with a view to protect the plaintiff's interest, who was a minor at the relevant time, the defendant No.2 had also executed an agreement (on the same date viz. 14.1.1972), in favour of his natural father Narendra Singh, inter alia, assuring that all the properties belonging to her and her husband would not be sold and that the plaintiff would be the sole owner / successor for the same.

Laying challenge to the sale deed dated 25.05.1976, the plaintiff contended that the contentious sale of plot No.225 carved out of House No.26/560, situated in Sardarpura, Udaipur by the defendant No.2 – Smt. Anand Kumari was illegal and unauthorized in teeth of the agreement dated 14.1.1972; for which it was sought to be declared illegal and without authority.

The plaintiff's entire case was edificed on the agreement dated 14.1.1972, purportedly executed by his adoptive mother Smt. Anand Kumari, at the time of his adoption. The plaintiff contended that the sale in question to defendant No.1 was illegal and liable to be declared as such, because the plaintiff having been adopted by defendant No.2 and her husband Khuman Singh, was the sole owner of the properties, belonging to them. It was thus prayed that the sale deed dated 26.5.1976 for the properties described in para No.4 of the plaint be declared null and void and ineffective against his rights.

In response to the suit so filed by the plaintiff, defendant No.1 – Smt. Raj Kumari filed a written statement and while disputing the factum of execution of the agreement dated 14.1.1972, pleaded her ignorance about the same. It was in the alternative contended that as she was not given any intimation or notice of such agreement, it was inoperative qua her. It was also asserted that she was a bonafide purchaser, with whom the defendant No.2 had entered into an agreement of sale way back on 7.2.1968, even prior to the adoption of the plaintiff. The defendant No.1 asserted that as the plaintiff had not issued any

public notice of the alleged agreement dated 14.1.1972, he cannot take any advantage of the same against the interests of defendant No.1 – a bonafide purchaser.

The defendant No.2 – Smt. Anand Kumari – mother of the plaintiff filed a written statement and she also disputed the very execution of the alleged agreement dated 14.1.1972. Smt. Anand Kumari maintained that on 14.1.1972, only the adoption deed was signed by her; and that the agreement dated 14.1.1972 mentioned in the plaint was a forged document. The defendant No.2 asserted that the plot in question was her self-acquired property, having purchased from her husband Shri Khuman Singh vide a registered sale deed, for which she was legally competent to deal with it. She also stated in her written statement that she had entered into an agreement of sale for the contentious property to the defendant No.1 on 7.2.1968, while handing over the possession of the plot to her and it was only in furtherance of such contract of sale, the sale deed dated 25.5.1976 came to be executed.

At the time of admission and denial of the documents, the defendant No.2 categorically refused to have signed and executed the agreement (Exhibit-2) dated 14.1.1972, but accepted the execution of the adoption deed dated 14.1.1972 (Ex.1) filed along with the plaint.

On the basis of the pleading of the parties, the Trial Court framed following issues :-

''1. क्या प्रतिवादीया नं. 2 ने दिनांक 14/1/72 को वादी की ओर से उसके कुदर्ती पिता श्री नरेन्द्रसिंह के पक्ष में एक अनुबंध श्री खुमानसिंहजी एवं स्वयं की जायदाद को खुर्दबुर्द, रहन, बेह नहीं करने बाबत लिखा ?

2. क्या बेहनामा दिनांक 26/5/76 वादी के मुकाबले में शून्य होकर बेअसर है ?

3. क्या विवादग्रस्त संपति प्रतिवादी नं. 2 की स्त्रीधन होने से उसे इसे स्थानान्तरण करने का अधिकार है ?

4. प्रतिकार क्या है ?''

On behalf of the plaintiff, PW-1 Subhash Singh; his natural father PW-2 Narendra Singh; PW-3 Chandanmal; PW-4 Sajjan Singh; and PW-5 Pratap Singh appeared in the witness box; whereas DW-1 Narayan Lal; DW-2 Anand Kunwar; DW-3 Jaswant Singh; and DW-4 Hemchandra Trivedi appeared in the witness box to give their evidence.

The Trial Court, after appreciation of the evidence both oral and ocular, decided Issue No.1 in favor of the plaintiff and held that the defendant No.2 – Smt. Anand Kumari had executed the agreement dated 14.1.1972 (Ex.2) in favour of plaintiff's natural father – Narendra Singh and undertook not to sell, alienate or transfer her properties and the properties belonging to her husband.

The Trial Court decided Issue No.2 also in favour of the plaintiff and held that the defendant No.2, having executed the agreement dated 14.1.1972 was precluded from selling the

property, vide subject sale deed dated 25.5.1976 to the defendant No.1.

Issue No.3, as to "whether the contentious property was 'stridhan' of defendant No.2, for which she was not authorised to transfer the same"; has also been decided in favour of the plaintiff and against the defendant. While relying upon the judgment of Hon'ble Supreme Court, rendered in AIR 1991 p.1869, the Trial Court held that despite the property in question being a 'stridhan', the sale effected by the defendant No.2 is void in light of the agreement she had entered into, whereby she had bound herself that she would not sell or alienate the same.

Having recorded these findings and decided the issues in favour of the plaintiff, the Trial Court decreed the suit and declared the sale deed dated 26.5.1976 to be null and void. While doing the same, the Trial Court had also directed the defendant No.1 to hand over the vacant possession of the said property within a period of two months vide operative portion of the judgment and decree dated 20.08.1992, which reads thus :-

> ''11. उपर्युक्त समस्त विवेचन के फलस्वरूप वादी का वाद विरूद्ध प्रतिवादी सव्यय डिक्री किये जाने योग्य है। परिणामस्वरूप वादी का वाद इस प्रकार डिक्री किया जाता है कि विक्रयपत्र दिनांक 26/5/76 तादादी रूपया 20,000/— जो वाद के पेरा नं. 4 में अंकित संपति के विषय में प्रतिवादीगण नं. 2 द्वारा प्रतिवादी नं. 1 के हक में निष्पादित किया गया उसे शून्य एवं प्रभावहीन घोषित किया जाता है तथा वादी के वादपत्र के पेरा नं. 4 में अंकित प्लोट पर वादी को आधिपत्य सुपुर्द करने बाबत प्रतिवादीगण के विरूद्ध सव्यय डिक्री किया जाता है।

विवादित परीसर को खाली करने हेतु प्रतिवादीगण को दो माह का समय दिया जाता है।''

Calling in question the judgment and decree dated 20.08.1992 passed by the Court below, Ms. Rekha Borana contended that the learned Trial Court has seriously erred in decreeing the suit filed by the plaintiff – respondent herein. She pointed out that during the pendency of the suit, defendant No.2 – Smt. Anand Kumari had died and the plaintiff had taken no steps for substitution of her legal representatives, as a result whereof, the suit in question stood abated. It was further contended by learned counsel for the appellant that defendant No.1 – Raj Kumari had also died on 30.01.1990 and the plaintiff filed an application seeking substitution of her husband only, without bringing her other existing legal representatives on record. In light of these facts, learned counsel for the appellant argued that the suit in question had since abated and was liable to be dismissed for non-joinder of necessary parties.

Ms. Borana vehemently argued that ignoring these fundamental lacunae in the frame of suit, the Trial court had seriously erred in passing the judgment and decree under consideration, particularly when no legal representatives of defendant No.2 - the seller of the property had been brought on record.

Learned counsel for the appellant pointed out that the defendant No.2 – the seller of the property, Smt. Anand Kumari

earlier having refused the execution of the agreement dated 14.1.1972, in her written statement had later admitted her signatures on the document Ex.2, when she appeared in the witness box, which admission has prevailed over the mind of the Court below. Learned counsel for the appellant contended that the testimony of Anand Kumari is worthless and meant only to be discarded out-rightly in the facts peculiar to this case. Ms. Rekha Borana further contended that learned Trial Court has failed to consider a vital aspect of the matter that the property in question was a self acquired property of defendant No.2 – Anand Kumari, who was vested with all rights, including right to sell and alienate. She contended that Anand Kumari had agreed to sell the plot in question way back on 7.2.1968, even before adopting the plaintiff (14.1.1972) and the said property was in continued possession of defendant No.1 – Raj Kumari; and that the sale deed dated 25.5.1976 was only an act in furtherance of the earlier contract of sale. She asserted that the agreement dated 14.1.1972 (Ex.2) was a forged document and that is why, the same was not placed along with the written statement. She submitted that the defendant No.2 had also alleged the agreement dated 14.1.1972 to be a forged document and had taken a specific plea that no such agreement was executed by her. Ms. Borana argued that the defendant No.2 was bound by her stand and any deposition contrary to it cannot be given any credence, in view of the settled law that a party is bound by his/her pleadings and evidence or statement contrary to such pleadings cannot be looked into.

In last, Ms Borana contended that without prejudice to her earlier arguments, even if it is assumed that the agreement dated 14.1.1972 (Ex.2) was executed, the said document cannot be read in evidence and no rights flowing therefrom can be asserted as the same was an unregistered document. Extending her argument further, she urged that purported agreement seeks to extinguish or relinquish her rights in the immoveable property, in favour of the plaintiff, for which it was compulsorily required to be registered, as per the provisions contained under Section 17 (1) (b) of the Registration Act, 1882. In absence of registration, the same cannot be gone into as mandated by Section 49 of the Registration Act, maintained learned counsel.

Learned counsel for the appellant argued that the document Ex.2 on which the entire case of the plaintiff rested, could not be read in evidence, while relying upon the judgment of **Hon'ble Supreme Court rendered in case of Dina Ji & Ors., Vs. Daddi & Ors., reported in AIR 1990 SC 1153**. Elaborating her contentions in light of the judgment of Apex Court, she argued that the document Ex.2, admittedly an unregistered document, can neither be led in evidence nor the proprietary rights of the appellant can be said to be extinguished or relinquished in favour of the plaintiff, without a registered document. The relevant part of the said judgment is being reproduced hereunder :-

> "9. This Section enacts that when the parties intend to limit the operation of proviso © to S.12, it is open to them by an agreement and it appears that what she included in the present deed of adoption was an

agreement to the contrary as contemplated in S.13 of the Hindu Adoptions and Maintenance Act.

10. Section 17 (1) (b) of the Registration Act clearly provides that such a document where any right in immovable property is either assigned or extinguished will required registration. It could not be disputed that this part of the deed which refers to creation of an immediate right in the adopted son and the divesting of the right of the adoptive mother in the property will squarely fall within the ambit of S.17 (1) (b) and therefore under S.49 of the Registration At, this could not be admitted if it is not a registered document. Unfortunately, the Hon'ble Judge of the High Court did not notice this aspect of the matter and felt that what could not be done because of the proviso (c) to S.12 has been specifically provided in the document itself but this part of the document could not be read in evidence as it could not be admitted. In view of this, the appeal is allowed. The judgments of the High Court and that of the lower appellate Court are set aside and that of the Trial court is restored. In view of these special circumstances, there is no order as to costs."

Learned counsel for the appellant cited another judgment of Hon'ble Supreme Court in case of **Chiranjilal Srilal Goenka Vs. Jasjit Singh & Ors., reported in AIR 2001 SC 266**, wherein the same principle has been elucidated. Relevant Para 21 of the said judgment is reproduced hereinfra :-

"21. As against this, learned senior counsel for the respondent Mr. Sanghi submitted that the aforesaid letter si not to be construed as a deed, but is to be

> taken as an offer letter and by conduct of adopting Radheshyam as son, Chiranjilal could not dipose of the property by will. In our view, this argument is totally devoid of any substance because if reliance is required to be placed on the letter for holding that it restrains Chiranjilal to dispose of the property by will, then it is required to be read as a document which limits the rights of Chiranjilal to deal with his property including the immovable property. Therefore, it would require registration. In any case, the aforesaid question is not required to be considered in detail because we have already arrived at the conclusion that there is no agreement between the parties before adoption indicating any contrary intention as contended."

Navigating the Court through the statements of various witnesses, particularly the statement of Jawan Singh Ranawant, the natural grand-father of the plaintiff, learned counsel for the appellant argued that their statements are most important and looking to his relations with the plaintiff and his status in the Society, they deserve due weightage. Learned counsel for the appellant submitted that Shri Jawan Singh DW-3 had clearly stated that on the fateful day of the plaintiff's adoption, Chandanmal the 'Kaamdar' was not available in the town, whereas the crucial document Ex.2 had been drawn in the handwriting of said Chandanmal, purportedly on the same date.

Ms. Borana in light of these facts contended that Shri Jawan Singh had denied not only the presence of Chandanmal but also the factum of execution of the agreement - Ex.2. She asserted

that these facts and circumstances clearly suggest that the agreement dated 14.1.1972 (Ex.2) was a forged and fabricated document.

While resting her arguments, Ms. Rekha Borana informed that Shri Jawan Singh – natural grand-father of plaintiff was a man of repute, having held esteemed position of a Judge of Rajasthan High Court from 29.08.1949 to 10.10.1961. She submitted that testimony of such revered person, who otherwise was closely related to the plaintiff should not be disbelieved or discarded, particularly when he was the person who had drafted the adoption deed and at whose request, the defendant No.1 was persuaded to adopt the plaintiff.

Learned counsel for the appellant cited the following judgments in support of her submissions that variance in pleadings and proof is not permissible :-

1. AIR 1974 SC 471 (Nagindas Ramdas Vs. Dalpatram Ichharam) (para 27)

2. 2015 AIR (SCW) 6475 (Ram Niranjan Vs. Sheo Prakash) (para 23 & 24)

3. 2011 AIR (SCW) 1061 (Kalyan Singh Chouhan Vs. C.P. Joshi) (paras 17, 18, 22 and 24)

4. 2003 AIR (SCW) 6005 (Sushil Kumar Vs. Rakesh Kumar)

5. AIR 1974 Raj. 73; Kusum Chand Vs. Kanhaiyalal) (para 6 & 9)

Learned counsel cited judgment of Hon'ble Supreme Court, reported in AIR 2004 SC 3974 (Ugre Gowda Vs. Nagegowda) in a bid to contend that mere adoption does not deprive a widow of her right to dispose of her self acquired property.

Mr. Arpit Bhoot, learned counsel for the respondents supporting the judgment and decree under consideration submitted that the appellant – defendant has taken a refuge of an agreement to sell dated 7.2.1968, which agreement firstly has not been proved and even if the same is proved, it does not help the case of the appellant. The reason being, that by virtue of the execution of the document dated 14.1.1972 (Ex.2), the appellant's power of transferring or alienating any of her properties was captivated or ceased, notwithstanding the prior agreement.

Mr. Bhoot submitted that the appellant has not been able to cite any judgment or provision of law, which requires a public notice of the agreement Ex.2. He argued that the agreement Ex.2 has its own effect and the appellant-defendant, pleading or proving ignorance of such document, cannot claim immunity from the rigours of law. According to him, the appellant cannot claim herself to be a bonafide purchaser to claim immunity from the force of the binding agreement and avoid the decree under consideration. Responding to the argument of the appellant that as stated by Anand Kumari in her written statement, the consent of Subhash Singh had been obtained; Mr. Bhoot argued that such consent is inconsequential, particularly because Subhash Singh – the plaintiff was minor at the time of execution of the sale deed

and secondly and more importantly, as the agreement (Ex.2) stipulated the consent of his father Narendra Singh. Even if it is presumed that the respondent – plaintiff had given consent for alienation of the 'Badi' in question, being ignorant of his rights, the contentious sale was void and contrary to the agreement dated 14.1.1972, assertively argued Mr. Bhoot.

He added that all the witnesses, may be the plaintiff's witnesses or the defendants' witnesses, admitted the signatures of Anand Kumari on the agreement dated 14.01.1972 (Ex.2), which proves the execution of the document Ex.2. In such situation and in face of the document Ex.2, any sale made by the defendant No.2 was illegal and contrary to the agreement or the promise she had made to the plaintiff's father. Learned counsel for the respondent cited judgment of Hon'ble Supreme Court in case of B.T. Govindappa Vs. B. Narasimhaiah, reported in AIR 1991 SC 1969. Claiming parity from the facts and law enunciated therein, he contended that in present case also, the defendant No.2 Anand Kumari, having agreed to refrain from selling the property, could not sell the same and the sale deed executed in favour of the defendant No.1 (appellant) was clearly in contravention of the restriction so imposed by Smt. Anand Kumari on herself, vide Ex.2. Relevant para No.6 of the aforesaid judgment is being reproduced hereinfra :-

> "6. The High Court did not find favour with the contentions raised on behalf of the appellant. The High Court held that the sale deed in favour of the appellant was clearly in contravention of the

restriction imposed on Smt. Thimmamma in exhibit D-1 and as such the sale deed Exhibit P-1 was invalid in law and conferred no title in the suit property on the appellant. In our opinion the High Court was right in taking the aforesaid view on account of the contents of exhibit D-1. There can be no manner of doubt that a Hindu woman is the full owner and entitled to deal with her stridhan property as she likes. She can also put any restriction or curtailment of her rights by her own consent and free will in her stridhan property. In the present case B. Narasamiah came by adoption in the family of Chikkahanumaiah and as a consequence of which he lost his right in the property of his natural father. At the time of adopting B. Narasamaiah not only Chikkahanumaiah but Smt. Thimmamma also agreed to grant the right of co-ownership in all the properties mentioned in the schedule which admittedly included the stridhan property of Smt. Thimmamma also. Smt. Thimmamma also put a restriction on her rights in the immovable properties detailed in the schedule and agreed that B. Narasamiah will have complete title after their death over all the immovable and movable properties and they will not transfer any property mentioned in the schedule in future and B. Narasamiah will also not transfer any property during their lifetime. The above recitals unmistakably go to show that Smt. Thimmamma had agreed not to transfer the property in question and as such the sale made in favour of the appellant is invalid. Learned counsel for the appellant was unable to show any infirmity in the Judgment of the High Court. We are happy to note that on our suggestion learned counsel for the respondent was able to persuade the respondent to pay an amount of

Rs.15,000/- to the appellant as a gesture of goodwill within two weeks from today."

Mr. Arpit Bhoot contended that the appellant had never questioned the admissibility of the agreement - Ex.2 before the Trial Court and it is for the first time in the appeal, the question regarding admissibility of the document has been raised by the appellant. He contended that the admissibility of the document cannot be raised at appellate stage, when no such objection was raised by the concerned party at the time of accepting the document or leading the same in evidence.

In support of his arguments, Mr. Bhoot cited the judgment rendered by Hon'ble the Supreme Court in case of Javer Chand & Ors. Vs. Pukhraj Surana, reported in AIR 1961 SC 1655.

He submitted that the above judgment has been followed by the Hon'ble Apex Court in Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (2006) 11 SCC 331 and by this Court in the case of Jagdish Vs. Smt. Deepsikha Garg, reported in 2013 (3) RLW 2562 (Raj.). He added that the judgment passed by the Hon'ble Supreme Court in Javer Chand & Ors., Vs. Pukhraj Surana still holds the field and the judgment relied upon by the appellant does not cover this aspect and as such cannot lend any support to the appellant.

Having argued the case, Mr. Bhoot has filed the written submissions 2 days later and cited following two judgments to the

effect that a judgment passed without considering principle of law, cannot be treated as precedent :-

(i) Satish Kumar Gupta Vs. State of Haryana, reported in (2017) 4 SCC 760

(ii) State of Uttranchal Vs. Sandeep Kumar Singh, reported in (2010) 12 SCC 794.

As is evident from the written submissions, these judgments have been cited by Mr. Bhoot in support of his contention that the judgment rendered in case of Dina ji (supra), relied upon by appellant, is of no help to them, as the question of admissibility of the contentious agreement (Ex.2) had never been put in question.

Ms. Rekha Borana, canvassing the cause of the appellant in rejoinder, submitted that without prejudice to her argument that the agreement Ex.2, was never executed by the defendant No.2 – Anand Kumari, the agreement dated 14.1.1972 (Ex.2) has to be read in its entirety. She submitted that if the disputed document is read as a whole, it transpires that there was no absolute embargo on her right to alienate the property. She pointed out that there is a stipulation in the agreement that the defendant No.2 – Smt. Anand Kumari would be entitled to sell the property, in case, need so arises, albeit with prior permission. She added that though there appears to be some confusion, as to whether the permission of Shri Narendra Singh was required or the permission of the plaintiff Subhash Singh was to be obtained; yet as the defendant No.2 herself appeared in the witness box and

deposed that the sale deed in question was executed in furtherance of the prior agreement and that Subhash Singh's consent had been obtained, the sale in question could not have been set aside by the Trial Court dehors the interest of the appellant, who had bonafidely purchased the land in question for consideration.

I have heard learned counsels for the parties and perused the material available on record. It would be apt to deal with the argument advanced by Ms. Rekha Borana in relation to the admissibility of the document at first as it goes to the root of the matter.

There cannot be two opinions that the fulcrum of the plaintiff's purported right or the case is the agreement dated 14.01.1972 (Ex.2), said to have been executed by the defendant No.2 – adoptive mother of the plaintiff, on the date of his adoption. A look at the said document shows that the defendant No.2 – adoptive mother of the plaintiff had surrendered, relinquished or extinguished her rights, not only in her self-acquired property but also in the property which had devolved on her after the death of her husband. Such a document vide which right of a person in an immovable property has been assigned, extinguished, transferred or relinquished, is required to be compulsorily registered as mandated vide provisions contained in Section 17 (1) (b) of the Registration Act. It will not be out of place to reproduce the provisions contained in Section 17 (1) (b) of the Registration Act, which read thus :-

> **"17. Documents of which registration is compulsory. -** (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been examined on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came on comes into force, namely
>
> (a) … … …
>
> (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
>
> (c) … … …
>
> (d) … … …
>
> (e) … … ..."

The judgment of Hon'ble Supreme Court in case of Dina Ji (supra), reported in AIR 1990 (SC) 1153 squarely governs this issue and favours the appellant on all fours. In light of the said judgment, this Court has no hesitation in holding that notwithstanding the veracity of the document dated 14.01.1972 (Ex.2), such document having effect of assignment, relinquishment or extinguishment of the plaintiff's rights in her immovable property in favour of the plaintiff is required to be registered and sans such registration, the contentious document can neither be held valid nor can it be let in evidence. The plaintiff

cannot rely upon such document to assert his rights in the immovable property, as the same is inadmissible in evidence.

Though the appeal of the appellant deserves to succeed on this count alone, yet this Court deems it appropriate to deal with other arguments also, so vehemently and vociferously advanced by the rival counsels.

Adverting to the first argument put forth by learned counsel for the appellant that the suit in question was incompetent in absence of substitution of legal representative(s) of Smt. Anand Kumari, defendant No.2 – the vendor; and also on account of failure of the plaintiff to bring on record all the legal representatives of defendant No.1 – Raj Kumari; for which the suit was liable to be rejected out-rightly; this Court, despite finding some substance in it, is not inclined to accept the same and reject the suit as such. The reasons for such view are not far to seek, firstly because the legal representatives of defendant No.1 – Raj Kumari – the purchaser have now joined the lis as appellants in the present appeal and secondly because the defendant No.2 – vendor – Smt. Anand Kumari has left behind her, only one legal representative; none other than Subhash Singh, who is already there as the plaintiff in the suit. In this view of the matter, technically speaking the arguments advanced on behalf of the appellant may have some substance, but it cannot be accepted looking to the peculiar facts of the extant case. There is no fundamental lacuna in the frame of the suit, for which it should shatter to the ground.

The second argument of Ms Borana has been that the testimony of the defendant No.2 – Smt. Anand Kumari is untrustworthy and her admission about the execution of the agreement dated 14.1.1972 deserves to be discarded. This Court is of the opinion that the Court should give due weightage to the deposition of the witnesses, in the witness box which are given in presence of the Presiding Officer, over the averments made by a party in his/her pleadings. It is true that Smt. Anand Kumari – defendant No.2 had specifically denied the execution of the contentious agreement dated 14.01.1972, however, instead of maintaining such stance, she took a detour and improvised her stand by saying that the document bears her signatures, while maintaining that someone might have misused her blank signed papers, for creation of the document. She, however, maintained that the plaintiff was taken into confidence, when the sale deed was executed on 25.5.1976. A comparative reading of the written statement of defendant No. 2 and her statement reveals that there is no significant contradiction between the same and what turns out from her pleadings and the statement is that the contentious agreement dated 14.01.1972 (Ex.2) bears her signatures. Notwithstanding this, the doubt still persists as to whether, the defendant No.2 had executed the subject agreement in favour of Narendra Singh - plaintiff's father, completely divesting her rights in her self-acquired property as well as the property belonging to her husband, who had since expired. This Court has sufficient and valid reasons to infer and hold that the

subject agreement dated 14.01.1972 was not executed by defendant No.2, which are set out herein below.

A perusal of the statement given by DW-3 – Shri Jawan Singh Ranawat unravels the falsehood in the stand of the plaintiff. This Court takes cognizance of the fact that Shri Jawan Singh Ranawat, none other than grand-father of the plaintiff, had adorned the prestigious seat of this Court from 29.08.1949 to 10.10.1961. In considered opinion of this Court, testimony of a person having scaled such an esteemed and high position should be given due weightage, more particularly in facts of the present case, when he was the natural grand-father of the plaintiff and at whose request Smt. Anand Kumari – defendant No. 2 had adopted the plaintiff – Subhash Singh. Though name of said witness was enumerated in the list of witnesses given by the defendant, yet he did not come at his own and was summoned by the Court, pursuant to request/prayer so made by the defendants.

According to the deposition of said witness, he had prepared the draft of the adoption deed, which came to be written on a stamp paper brought by Chandanmal – 'Kamdaar' and written in the hands of Vaidhya Hemchand Trivedi. DW-3 deposed that said 'Kamdaar' Chandanmal was not present on 14.1.1972, when the adoption ceremony took place and he had reportedly gone out of Station. DW-3 had also asserted that neither such agreement was executed by Anand Kumari nor any information of such agreement was ever given to him. Shri Jawan Singh maintained that had any intention or understanding of relinquishing the proprietary right of

Anand Kumari made known to him, he would have definitely incorporated such covenant in the adoption deed itself. It will not be out of context to reproduce excerpts from his statement, as they have necessary bearing on the case at hand:-

"बयान गवाह डी. डब्ल्यू 3 जवानसिंह राणावत

..... मैं हल्फ से (सौगन्ध) से कहता हूँ कि मेरा नाम जवान सिंह राणावत पिता का नाम कुंवर रणधीर सिंह कौम राणावत उम्र 82 वर्ष

..... ठाकुर खुमान सिह की मृत्यु के 12 दिन बाद उत्तराधिकारी के पगडी बांधने का दस्तूर किया जाता है। ठाकुर खुमानसिंह के मृत्यु के ग्यारवे दिन ब्रेगेडियर जसवंतसिंह ने कहा कि पगड़ी बांधने का दस्तूर रिवाज के अनुसार किया जाना चाहिये मुझे कहा। मैंने उनको कहा कि अपन मिल कर आनंद कुवर जी के पास चले और प्रार्थना करे, इस पर मैं, ठाकुर महेन्द्र सिंह व ब्रेगेडियर साहब और भी पांच सात रिश्तेदार मिल कर जनाने में आनंदकुँवर के पास सुबह 9 बजे नौ बजे पहुँचे मैंने इस विषय मे बातचीत करने के लिये ब्रेगेडियर साहब को कह दिया था, मैं कुछ नहीं बोलूंगा मेने कुछ नहीं कहा, ब्रेगेडियर साहब ने आनंद कुंवर जी को कहा कि किसी लड़के को गोद ले लो, उसे पगड़ी बंधा दो पहले तो आनंद कुंवर ने कहा कि क्या जरूरत है । इन्कार कर दिया पर ब्रेगेडियर साहब के आग्रह करने पर उन्होंने कहा कि मैं सुभाष को गोद ले लूंगी। .....

..... नरेन्द्र सिंह ने चंदनमल जो उस समय कामदार का काम भी करता था उसकों कपासन भेजा और स्टाम पेपर उसी रोज मंगा लिया, दूसरे रोज सुबह मैंने नरेन्द्र सिंह से पूछा तो उसने बताया कि गोदनामा लिखाने के लिये स्टाम चंदनमल ले

आया है। फिर मैंने गोदनामे का ड्राफ्ट लिख कर नरेन्द्र सिंह को दिया और उस को कहा कि स्टाम्प पर इस मसूदे के मुताबिक चंदनमल से गोदनामा लिखवालों इस पर नरेन्द्रसिंह ने मुझे बताया कि चंदनमल तो शाम को स्टाम्प पेपर लेकर भोपाल सागर चला गया है। और यह कह गया है कि वो आज भोपाल सागर से नहीं आयेगा उस के घर पर कुछ काम है। मैने कहा वैद्यराज हेमचंद त्रिवेदी जी से लिखवालों फिर नरेन्द्र सिंह ने वैद्य राज हेमचंद जी से गोदनामा लिखवा लिया जो Ex1 है। .....

..... यह बताता हूं कि यह गोदनामा 14/1/72 को लिखा गया उस रोज करीब 10 बजे ब्रेगेडियर जसवंतसिंह जी, जोरावर सिंह सनवाड़, डॉ. विरेन्द्र सिंह और ठाकुर महेन्द्र सिंह जी और भी दस पांच रिश्तेदार मिल कर आनंद कुमारी के पास गये और उनको गोदनामे पर दस्तखत करने को कहा इस पर उन्होंने गोदनामे पर दस्तखत किये जो Ex1 पर A to B है। .....

..... मैनें Ex2 देखा ये कागज चंदनमल के हाथ का लिखा हुआ है क्योंकि उस पर कातिब के दस्तखत चंदनमल के है तारीख 14.1.72 है। और गोदनामें की तारीख भी 14.1.72 है। उस तारीख को चंदनमल कांकरवा में मौजूद नही था इससे ज्ञात होता है कि ये Ex2 बाद में लिखा गया है। Ex-2 पर भी A to B आनंद कुमारी जी के दस्तखत है। .....

..... Ex-2 के बारे में आनंद कुमारी जी ने दिनांक 14. 1.72 को मुझे कुछ भी नहीं बताया यदि मुझे बताया जाता तो गोदनामे में यह Ex2 के तथ्य भी लिख देता । .....

<u>जिरह – श्री वकील गोरवाड़ा द्वारा –</u>

नरेन्द्र सिंह आनंद कुमारी से बाला बाला मिल कर Ex2 लिखवाया हो यह सम्भव नहीं हो सकता क्यों कि यदि आनन्द कुवंर जी को लिखवाना होता तो मुझ से जरूर कहती। मेरी गवाही गोदनामा Ex1 पर नहीं है। चंदनमल की लिखावट मैं नहीं पहचानता हूँ पर Ex2 पर आनंद कुंवर जी के दस्तखत है जिन्हे मैं पहचानता हूँ। .....

..... नरेन्द्रसिंह मेरा लड़का है उसने बटवारे का दावा डिस्ट्रीक्ट जजी चितोडगढ़ मे कर रखा है मेने कोई दावा नहीं किया है। जिस में मैं भी एक प्रतिवादी हूँ। सुभाष, नरेन्द्रसिंह का जायंदा लड़का है जिस को ठाकुर खुमान सिंह के नाम पर गोद लिया गया है। .....''

Upon carefully scanning the record, the suit as well as the other connected cases, this Court could not lay hands on the original agreement dated 14.01.1972, which is the basic bone of contention, however a photocopy thereof is available and the same had been exhibited. Be that as it may, since objection to this effect had not been raised by any of the parties, while tendering the same in evidence, this Court does not deem it appropriate to take exception to this.

Be that as it may, in wake of the pleadings of the parties, testimony of Anand Kumari – the purported executor of such document and statement of DW-3 – Jawan Singh, this Court is of

the opinion that the execution of the document dated 14.1.1972 itself is in realm of doubt or suspicion.

Now, I proceed to deal with the Judgments cited by the rival counsels at Bar. The first Judgment of Hon'ble the Supreme Court cited by Ms. Borana in case of Ugre Gowda, AIR 2004 SC 3974, that mere adoption does not deprive a widow of her right to dispose of her self-acquired property, is of little avail to the appellants in the present facts. It is to be noticed that the plaintiff's case is not premised on the factum of adoption alone, but the same had been projected on the document of even date, i.e. 14.1.1972, vide which, the defendant No.2 – Anand Kumari had seemingly restrained herself from alienating or transferring her own properties, besides the properties of her husband duly vested in her. It has not been the case of the plaintiff that as a result of the adoption simpliciter, the defendant No.2 was stifled of her right and authority to alienate the property; the plaintiff's case has hinged on the agreement (Ex.2). As such, this judgment of Hon'ble the Supreme Court is hardly of any help to the appellant.

Mr. Arpit Bhoot zealously supporting the judgment and decree oppugned by the appellant contended that the appellant's reliance on the agreement to sell dated 7.2.1968 is a sham.

Having considered the pleadings of the parties, statements and arguments advanced by the appellant, this Court finds that the appellants have not based their right upon the agreement to sell dated 7.2.1968 but have disclosed the same as an event,

leading to the execution of sale deed. The agreement of 1968 has been referred to, with a view to canvass that the sale deed dated 25.5.1976 was a culmination of a prior agreement entered into between the parties, even before the adoption took place. Be that as it may, since the impugned registered sale deed conveying the property to the defendant No.1 has been executed, the agreement to sell dated 7.2.1968 is insignificant or inconsequential and the same is relevant only for the purpose of complete recital of facts of the case.

In response to the argument of the appellant that as the plaintiff had not given any public notice of the subject agreement dated 14.1.1972 (Ex.2), the purchaser's right cannot be effected; Mr. Bhoot learned counsel for the respondent argued that there is neither any such requirement of law, nor the appellants have cited any provision of law or judgment in support of such contention.

With reference to the contention regarding public notice, this Court is of the view that though there appears to be no statutory requirement, contemplating issuance of public notice of such agreement, yet the defendant No.1 – appellant herein has proved that they had no information about the execution of the agreement dated 14.01.1972 (Ex.2). The appellant – defendant No.1 was, therefore, a bonafide purchaser, having purchased the property relying upon title document and the assertion made by the defendant No.2 – Anand Kumari.

The following provisions of the Transfer of Property Act, 1882 protects the interest of the purchaser in the case like this:-

"Section 55. Rights and liabilities of buyer and seller. *- In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:*

(1) The seller is bound -

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

…….. …….. ……..

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it."

If the plaintiff wanted to assert that the defendant No.1 had the information or intimation about the execution of the agreement (Ex.2), the burden to prove such fact lies upon the plaintiff. The plaintiff, having failed to discharge his burden and

bring on record the fact that the defendant No.1 had information or knowledge about the agreement dated 14.01.1972, the defendant No.1 remains a bonafide purchaser and her rights cannot be given a go-by in the guise of a purported agreement, the veracity, authenticity and admissibility whereof in evidence is seriously questionable.

Hence, even if it is presumed that Anand Kumari had executed the agreement (Ex.2), it was her duty to disclose this fact to the buyer, defendant No.1 and on her failure, rights of defendant No.1 or the appellant cannot be put to peril.

Mr. Bhoot's argument that all the witnesses, including Anand Kumari had admitted the signatures on the contentious agreement dated 14.1.1972, is untenable in the eye of law. The Court is required to weigh the evidence of the parties, keeping in view the other antecedent circumstances, such as pleadings and testimony of other witnesses. The fact that the signatures on the contentious document have been proved to be of Anand Kumari, is by itself not sufficient to prove that such document was at all executed, on the date of adoption of the plaintiff Subhash Singh. It is pertinent that the Defendant No.2, Anand Kumari herself had not admitted to have executed the document in question and she had only admitted that it bears her signatures. The fact that two documents of same date were prepared and written by different persons, in presence of different witnesses, and there being absolutely no reference of the other document, in these two

documents is enough to infer that the other agreement (Ex.2) had been concocted subsequently.

The sheet-anchor of the argument of Mr. Bhoot has been; the judgment of Hon'ble Supreme Court in the case of B.T. Govindappa, AIR 1991 (SC) 1969. A perusal of the said judgment, more particularly the facts of this case reveals that the adoption deed itself in the said case, contained a clause, contemplating that the adoptive mother would not sell, transfer or alienate the property belonging to her and her husband and more particularly the adoption deed in question was a registered document. Whereas in the present case, neither the adoption deed was registered nor the same contained such a clause; as against this, another document of the even date was brought to fore to assert that the adoptive mother had volunteered to surrender or relinquish her right of dealing with the properties. These two crucial facts completely turn the table in favour of the appellant. Though the adoption deed had been executed on 14.1.1972, which has been admitted by all the parties, no stipulation regarding restraint on mother's right to dispose of the property was contained in it; and such stipulation had been introduced vide another agreement dated 14.01.1972 (Ex.2). Even if, the existence of Exhibit 2 is accepted, admitted or proved, the same could not have been done, except by way of a registered document, as this kind of covenant amounts to cessation or relinquishment of rights to transfer an immoveable property.

Much was argued by Mr. Bhoot regarding the question of admissibility of the document Ex.2 by contending that no such question regarding the admissibility of the document had been raised by the appellant. A perusal of the record reveals that the appellant – defendant No.1 had raised an objection albeit regarding non-payment of requisite stamp duty, when the disputed document (Ex.2) was tendered in the evidence; at such point, the plaintiff had undertaken to pay the stamp duty, if payable and on such assurance, the document was admitted in evidence. Though the objection of the defendant No.2 was only in relation to payment of stamp duty and not about registration, yet it is pertinent that requirement of raising objection at the time of tendering the document in evidence, and not after-wards; is confined only about the objection of stamp duty and such principle is not applicable, when it comes to opposing the admissibility of the document, for want of registration.

Before dealing with this question, it is to be noticed that the appellant has taken this ground, specifically in their memo of appeal and the same has been the principal argument from appellants' side, during the course of hearing. Otherwise also, the question of registration of document is a fundamental question, which goes to the root of the matter and hence, the same can be permitted to be raised at any stage. There is no provision in the Registration Act, which restrict the power of the opposite party to raise such plea of requirement of registration at a subsequent stage, in juxtaposition to Section 36 of the Indian

Stamp Act, 1899 or Section 40 of the Rajasthan Stamp Act, 1998.

All the judgments cited by Mr. Bhoot in relation to his plea that the objection of admissibility cannot be raised at a later stage are cases where an objection of admissibility of document at a later stage was raised regarding non-payment or deficit payment of stamp duty. Hence, these judgments are not applicable in the present case.

The act of conveying an immoveable property by any mode - sale, gift or relinquishment, can be done only by way of a registered document. The absence of registration hits at the very root of the document and the same can neither be led in evidence, nor any rights flowing therefrom can be claimed or asserted.

The proviso to Section 49 of Registration Act also does not come to the rescue of the plaintiff, as the purpose for which the contentious covenant has been relied or placed on record cannot be said to be a collateral purpose, by any stretch of imagination. Needless to reiterate that the agreement dated 14.01.1972 has been the foundational fact or sole premise for asserting the plaintiff's title or property right in the disputed property.

Catena of other decisions, cited by Mr. Bhoot on the principles of precedents, are not applicable in the facts of the present case and the same have been cited only with an anxiety to contend that judgment of Hon'ble Supreme Court rendered in case of Dina ji (supra) is per-incuriam, as the question regarding the stage at which such question can be raised, had not been

considered. In wake of the finding and settled principle that the question of registration being a basic question, can be raised at any stage, the judgments cited by Mr. Bhoot are of no aid to him.

As a result of the discussions foregoing, this Court is of the considered opinion that the appeal of the appellant deserves to be and is hereby allowed. The judgment and decree dated 20.08.1992 passed in Civil Original Suit No.104/1997 in the matter of Subhash Singh Vs. Raj Kumari & Ors., is quashed and set aside. The suit filed by plaintiff is dismissed.

Following the judgment aforesaid, all the appeals between the common parties involving identical facts; pleadings; statement; and questions of law are allowed and corresponding judgment and decree impugned therein are quashed and set aside. The suit in each case is dismissed.

Parties are left to bear their own costs.

(DINESH MEHTA), J.

Arun, PS